IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 106 OF 2001

Dinkar Maruti Shedage ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

.....

Mrs. Vrushali Raje advocate appointed for the appellant-accused.

Mrs. P.H.Kantharia APP for the State.

.....

CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 25TH APRIL, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 14-12-2000 passed by the Additional Sessions Judge, Satara in Sessions Case No. 157 of 2000 the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case stated briefly is that the accused and the victim were man and wife and were accustomed to quarrels. According to the prosecution one such quarrel took place in the evening on 23-5-1998. On that day at about 11 a.m. the victim who is the wife of the accused came running into the house of her mother-in-law and entered the kitchen. She was followed by the accused Dinkar and he also entered into the kitchen. There was scuffle between the husband and the wife. The mother of the accused intervened and said he (accused) should not beat the deceased Surekha, wife of accused Dinkar. But the accused assaulted his wife who fell on the ground and then accused left the place saying that he wanted to go to police station to inform that he has murdered his wife. Factually the accused went to police station and made a statement to the police, which is recorded as Exh. 44. According to that complaint, police started investigation, came to the scene of offence, conducted certain seizures, panchanama and recoveries etc. arrested the accused who was already in the police station and on completion of the investigation prosecuted the accused under section 302 of IPC for having murdered his wife on 23-5-1998 around 11 a.m.

4. The prosecution has, in support of its case, examined eight witnesses and the learned trial Judge on appreciation of the evidence of these persons as also other documentary evidence on record came to the conclusion of guilt and consistent with that conclusion, convicted the accused as aforesaid. The learned advocate Mrs. Vrushali Raje appointed for the accused contended that the conviction is based only on the testimony of interested witnesses. In fact the so called eye witness is not an eye witness to the factual assault. The extra judicial confessions are not duly corroborated. The confession of the accused given in the police station is admissible and in such circumstances, the learned trial Judge erred in convicting the accused as aforesaid. These submissions were countered by the learned A.P.P. by pointing out from the evidence of eye witness and other witnesses to whom it was immediately disclosed that the conviction is based on substantial evidence and there is no room for setting aside the same. We have to appreciate this rival submissions in the light of the evidence as it stand and as we have reappreciated.

5. P.w.1 Raghunath Baburao Veer was called to act as a panch. He went to the house of the accused where he saw blood stains and broken bangles which were seized.

He saw the dead body of the victim, panchanama was prepared and he has proved the same as one prepared in his presence. Obviously, he is not an eye witness but he has deposed before the court the circumstances as revealed by the panchanama and has personally seen by him while recording that panchanama. The panchanama also records the fact that there was a knife stab in the back of the victim and it gives the description of the situation in which body was discovered.

6. P.w.2 Harubai is the mother of the accused, who is an eye witness to the incident. She has deposed to the background of the incident. She has stated how many children she has. She states that the accused is her eldest son and the deceased Surekha was his wife.

7. On the date of the incident she noticed that the accused was in his house and she (the witness) was in her own house. She has then stated that around 11 a.m. when she was sitting alone in the sopa i.e. front side varanda of her house, Surekha the victim came running to the house and entered in the kitchen. The accused also followed her and entered the kitchen where there was a suffle between the husband and the wife. She told her son that not to beat the deceased and to come

out of the kitchen immediately. However, the accused assaulted Surekha. She fell on the ground. Accused came out of the house and went towards police station. She has also deposed that the clothes of the accused were blood stained. In her cross examination she has stated that she was lying in the varanda when the accused came and heard shouts of her daughter-in-law and then she entered the kitchen to find that her daughter-in-law was lying in a pool of blood. After sometime the accused came there to see what has happened to his wife. The contention is that admittedly she was in the varanda and therefore could not have been seen the assault. We must accept this statement for a simple reason that there is nothing on record to show that a person sitting in the varanda could not see what has happened in the kitchen. Apart from the fact as to whether this witness is an eye witness and there is intrinsic evidence to corroborate what she has deposed as a witness. Exh.26 which is spot panchanama very clearly records the manner in which the body was recovered. The stab injuries corresponds to the injuries as deposed to by the witness. Apart from the fact that there are other witnesses who definitedly are not eye witness but who had corroborated what has been stated by this witness. Therefore evidence of this witness P.w.2 cannot be

discarded merely because there is some contradiction in her statement during the cross examination.

8. Then we have testimony of P.w.3 who heard the accused telling him that the accused killed his wife and therefore he wanted to go to police station. This witness very categorically stated that after he heard the accused saying so, the police patil arrived at the spot and took the accused to the police station. The testimony of this witness was subjected to cross examination but nothing revealed in the cross examination to require the testimony of this witness to disbelieve. He subsequently corroborates the eye witness account of P.w.2. In addition to that he is a direct witness to the extra judicial confession made by the accused, when the accused himself told that he has killed his wife. This testimony therefore corroborates substantially to P.w.2 who is an eye witness and hence statement of P.w.3 gets substantial corroboration from the panchanama as proved by P.w.1.

9. Then we have the evidence of P.w.4 who said that the accused killed the deceased in the house of Harubai. She also heard the shouts of the victim and then she heard the accused saying that he (the accused) has assaulted his wife the victim. The testimony of

this witness therefore substantially corroborates the testimony of P.w.3 regarding extra judicial confession by the accused. The accused has immediately disclosed on coming out of the house of Harubai that he has stabed his wife. The fact that he went to police station also corroborates the claim of these two witnesses though Exh.44 cannot be looked into.

10. Then we have the evidence of p.w.5 Bapurao the panch to the seizure of blood stained clothes of the accused under panchanama. P.w.6 Krishnarao has prepared the sketch map of the spot and P.w.7 is the doctor who conducted the post mortem and stated that the victim met homicidal death.

11. The investigating officer is examined as P.w.8. He has deposed to the entire process of investigation and has proved the photographs of the dead body and the surroundings as were taken by the photographer. A perusal of the photograph further verifies and corroborates the testimony of P.ws. 2, 3 and 4 who say that the accused assaulted the victim. P.w.3 has stated that he noticed the clothes of accused stained with blood and the accused was frightened. He then heard the accused saying that the accused has finished his wife and is going to inform the police. Thereafter

the police patil came. The witness then says that the wife of the accused Dinkar was lying in the kitchen of the accused's mother and she was facing the earth and there were dagger pierced in her back. This oral testimony of this witness is a direct corroborative unimpeachable evidence in the shape of photograph. Statement of P.w.4 specifically corroborates the testimony of P.ws 2 and 3. She also heard the accused saying that he has killed his wife and is going to police. The fact that the accused factually went to police is also proved.

12. It will thus be seen that there is unpeachable evidence on record in the shape of eye witness which are substantially corroborated by other witness. The medical evidence also further lends intrinsic support to the deposition of the witness and in our opinion therefore the learned trial Judge has not committed any error whatever in finding that the accused was guilty of committing murder of his wife. The sentence inflicted being minimum, nothing needs to be said about it. In our opinion, there is no substance in this appeal and the same is liable to be dismissed and is accordingly dismissed.

13. In this case the accused was represented by appointed advocate who tried her best to put forward the defence of the accused as an appointed advocate. We therefore contified the fees to be paid to the advocate appearing for the accused as Re. 1000/-.

xxxx